SUPREME COURT, U. S.
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MICHAEL RODAK, JR.

Supreme Court of the United States

October Term, 1974
No. 74-917

CLAIM OF CHESTER E. GORDON, Administrator of the Estate of Arthur J. Crawley, Deceased,
Petitioner,

vs.

DOROTHY M. DAHL, Widow, Administratrix of the Estate of George M. Dahl, Deceased, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This consolidated brief is filed on behalf of Joyce A. Davis, Donald E. Worcester, Nicholas Homich, John Groh, Sarah MacLeod, Ruthie J. Marcotte and Florence Kapets, all adverse parties in interest, in opposition to the Petition for Certiorari in this Court to review the judgment of the United States Court of Appeals for the Sixth Circuit in Case No. 73-1350 on the docket of said court.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Sixth Circuit which is the subject of this Petition for Certiorari is now reported in 505 F. 2d 517, 1974. The opinion of the District Court is reported in 353 F. Supp. 691, 1973.

PRIOR PROCEEDINGS

Two Special Masters acting for the District Court prepared a 217-page report in dividing a $2,750,000 settlement fund among the beneficiaries of 28 decedents lost aboard the Daniel J. Morrell when she broke in two and sank in November, 1966.

The District Court adopted the Masters' report as its findings and judgment.

Representatives of estates of two decedents (Rischmiller and Crawley) appealed to the Court of Appeals. In a consolidated opinion (Pet. 39), both appeals were rejected. Only one of the appellants (Crawley) has now petitioned for a Writ of Certiorari.

QUESTION PRESENTED FOR REVIEW

Can the estate of Crawley recover under federal maritime law (Moragne) for the loss of his prospective savings when his survivors were nondependent brothers and sisters, all older than him, either for the benefit of said survivors or for the benefit of his estate?

The District Court answered "No."

The Court of Appeals answered "No."

We urge the correct answer is "No."

STATEMENT OF THE CASE

Decedent Crawley never married, had no spouse or children, his parents were deceased. His sole next of kin were two brothers and four sisters. It was conceded that no contribution of any kind or consequence, however slight, ever passed from decedent to his brothers and sisters. There was no dependency even in the broadest, most liberal sense of the term.

The District Court disallowed said claim because his said relatives were nondependent collateral relatives and, in addition, being older than the decedent, they probably would not have survived him in any event (Pet. 42-43).

The Circuit Court of Appeals affirmed the judgment of the District Court following the clear pronouncements, guidelines and policy of the law as expressed in *Moragne v. State Marine Lines, Inc.*, 26 L. Ed. 2d 339, 398 U.S. 375, 1970, 90 S. Ct. 1772; and *Sea-Land Services, Inc. v. Gaudet*, 1974, 414 U.S. 573, 39 L. Ed. 2d 9. The Circuit Court of Appeals considered the policy behind *Moragne* as showing solicitude for the dependents of the decedent and not for their inanimate estates (Pet. 45-46, 49). It rejected a recovery for loss of inheritance to collateral nondependent relatives or estate loss for prospective savings because it was punitive and not compensatory and not in keeping with the liberal concepts of the maritime law (Pet. 47). It also rejected the claim because such allowance has commended itself to so few other jurisdictions.

ARGUMENT

A. Moragne and Gaudet Focus on Benefits to Dependents.

The purposes of *Moragne v. States Marine Lines, Inc.*, 26 L. Ed. 2d 339, 398 U.S. 375, 90 S. Ct. 1772, was to correct an anomaly in existing law. To extend a new "common law" right to the limits of the most favorable previously existing remedies in the maritime experience makes sense.

The thrust of *Moragne* is to remove an impediment in reaching benefits available under the general maritime law. The Court did not intend to create a whole new body of law. At 26 L. Ed. 2d 359:

> ". . . our decision [360] does not require the fashioning of a whole new body of federal law, but merely removes a bar to access to the existing general maritime law."

Looking to the most liberal of the maritime remedies in wrongful death, there simply is no precedent to grant loss of inheritance to a nondependent relative or to an estate.

Death on the High Seas Act, 46 U.S.C. §761 states a suit may be maintained:

> ". . . for the exclusive benefit of the decedent's wife, husband, parent, child or *dependent* relative. . ." (emphasis ours)

The Jones Act, 46 U.S.C. §688 incorporates the provisions of the F.E.L.A., 45 U.S.C. §51, which provides an employer shall be liable to the personal representative of a decedent:

". . . for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and if none, then of the next of kin *dependent* upon such employee. . ."

It is clear from appellant's brief that there is no law anywhere that supports his claim. To grant the relief he seeks would create a new and broader recovery where none now exists.

In the opinion of the Court of Appeals (Pet. 50):

"We have, in fact, been shown no case in which a nondependent collateral relative was awarded damages for his loss."

This lawsuit is a particularly inappropriate one in which to carve out new remedies. There was a single settlement in which 28 claimants shared. To now give to one takes away from another.

The Special Masters, the District Court and the Court of Appeals all ruled that even under *Moragne*—no recovery lies for nondependent relatives.

The Circuit Court of Appeals has decided the case in accordance with clear pronouncements of this Court.

This Court has made it abundantly clear that a *Moragne* recovery for wrongful death is for the benefit of decedent's dependents, and they may recover damages for their loss of support, services, society and funeral expenses, the underlying policy of the law being solicitude for decedent's dependents. (*Sea-Land Services, Inc. v. Gaudet*, 1974, 414 U.S. 573, 576, 577, 583, 584, 39 L. Ed. 2d 9, 16-17, 20-21).

Therefore, it is not a recovery for "estate loss" or loss of prospective inheritance for nondependent collateral relatives. If it were a recovery for "estate loss", creditors

and legatees would be preferred over dependent and nondependent relatives; and dependent and nondependent relatives would be treated equally—itself an inequity. Equality is not ipso facto equity.

The Circuit Court of Appeals followed the clear pronouncements of this Court with respect to the underlying policy of solicitude for the dependents of the decedent in a *Moragne* recovery for a wrongful maritime death, and followed its guidelines for determining who may recover and for what damages by gleaning societal concern from all statutes, state and federal, and from the general maritime law (Pet. 46-50). Its decision that there is no recovery to or for nondependent collateral relatives for loss of their prospective inheritance, nor can the estate recover for loss of prospective savings, is in accord with clear pronouncements of this Court (Pet. 49-51). Therefore, there is no need for review by this Court of established law.

The Court of Appeals opinion, at (Pet. 50),

> "We remain unconvinced that the humanitarian principles of maritime law which led the Supreme Court in *Sea-Land Services v. Gaudet, supra,* to compensate a widow for loss of society, should lead us to hold that a nondependent and collateral relative should recover for loss of an inheritance, based solely upon his legal relationship to the deceased as next of kin.

and at (Pet. 51)

> "Comfort, companionship and society, recognized in *Gaudet, supra,* go to the very heart of family life, and their loss by family members is genuinely felt, thus justifying the intervention of the humanitarian maritime law. On the other hand, loss of prospective in-

heritance by one whose hopes of that inheritance hinge upon the fortuity of a man remaining unmarried and childless throughout his life, is not an injury capable of comparison with the losses sought in *Gaudet*. The mere accident of blood relationship with nothing more does not itself call for that special solicitude which the maritime law holds for those injured within its jurisdiction."

B. The Nature of a Moragne Recovery for Wrongful Death.

Moragne established for the first time a nonstatutory right to recover for a wrongful maritime death, overruling *The Harrisburg* in the process (*Moragne v. States Marine Lines, Inc.*, 1970, 26 L. Ed. 2d 339, 361, 398 U.S. 375, 409, 90 S. Ct. 1772; *The Harrisburg*, 119 U.S. 199, 213, 30 L. Ed. 358, 362). However, *Moragne* left unanswered who are the beneficiaries of this newly created maritime right and what are the recoverable damages. It left these matters to be worked out in the lower courts, suggesting analogies from both federal and state death statutes and from general maritime law as appropriate guidelines (*Moragne v. States Marine Lines, Inc.*, 1970, 26 L. Ed. 2d 339, 360-361, 398 U.S. 375, 406-408, 90 S. Ct. 1772).

Since the *Moragne* right to recover for a maritime wrongful death is now a creature of the maritime law, the class of beneficiaries and the recoverable damages must be fashioned by the maritime law. The courts have long looked to state statutes for guidance even before *Moragne*. (*Petition of U. S. Steel Corporation*, 1970, 436 F.2d 1256, 1278-1279, 6th Cir.; *Simpson v. Knutsen*, 1971, 444 F.2d 523, 524, 9th Cir.; *Petition of Canal Barge Company*, 1971, 323 F. Supp. 805, 820-21, N.D. Miss.; *Just v. Chambers*, 312 U.S. 383, 389-391, 85 L. Ed. 903, 909.)

"If still other subsiidary issues should require resolution, such as particular questions of the measure of damages, the courts will not be without persuasive analogy for guidance. Both the Death on the High Seas Act and the numerous state wrongful-death acts have been implemented with success for decades. The experience thus built up counsels that a suit for wrongful death raises no problems unlike those that have long been grist for the judicial mill." (*Moragne*, 26 L. Ed. 2d 339 at 361, 398 U.S. 375, 90 S. Ct. 1772).

This Court recently, in *Sea-Land Services, Inc. v. Gaudet*, 1974, 414 U.S. 573, 39 L. Ed. 2d 9, defined the nature of a *Moragne* recovery for a maritime wrongful death, its underlying policy, and the recoverable damages. This Court has made it abundantly clear that the underlying policy of a *Moragne* recovery for a maritime wrongful death was to establish a uniform federal law *for the protection of decedent's dependents* (*Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 576, 577, 583, 584, 591, 39 L. Ed. 2d 9, 16, 17, 20).

The recoverable damages upon a review of the authorities and the policies of the maritime law persuaded this Court to conclude that *the members of the decedent's dependents* may recover damages for their loss of support, services, society and funeral expenses (*Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 584, 591, 39 L. Ed. 2d 9, 20-21, 24).

C. Reasons for Denying the Writ of Certiorari.

1. *There is no conflict in the Circuits.*

There is no conflict in the Circuits with respect to the recovery by nondependent collateral relatives for loss of inheritance or estate loss for prospective savings.

The loss of prospective inheritance has been allowed frequently to qualified beneficiaries under federal acts that designate the beneficiaries. As pointed out in those cases, it was reasonable to expect a decedent to provide for his immediate family. No case has been cited where a nondependent collateral relative was awarded damages for loss of his prospective inheritance except under "loss to estate statutes" (Pet. 49-50). To apply such a concept in a maritime case under facts in the instant case as stated above, would result in inequity and injustice to dependent relatives in need.

2. *The Circuit Court of Appeals properly applied the law.*

As noted above the Circuit Court correctly followed the guidelines set forth in *Moragne* and *Gaudet*. Therefore, there is no need for review by this Court of established law.

CONCLUSION

Moragne did not intend to create a whole new body of federal law. This Court suggested the courts would not be without "persuasive analogy" as they endeavor to resolve subsidiary issues left open in *Moragne*.

Appellant has failed to advance any "persuasive analogy." Appellant has failed to advance *any* analogy in any jurisdiction.

If there is any confusion in the mind of appellant thus raising the need in his view to clarify the law, then one would expect some holding somewhere that supports appellant's position. Finding none, we urge an early termi-

nation of this litigation which was "settled" by agreement with the vessel owner in December of 1970.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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